

EXHIBIT 20

*PACIFIC ALLIANCE ASIA OPPORTUNITY FUND L.P. vs.
KWOK HO WAN*

*MICHAEL HORVITZ
April 9, 2019*



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Min-U-Script® with Word Index*

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF NEW YORK
3 -----X
PACIFIC ALLIANCE ASIA OPPORTUNITY FUND L.P.,

4 Plaintiff,
5 KWOK HO WAN, a/k/a KWOK HO, a/k/a GWO WEN GUI,
a/k/a GUO WENGUI, a/k/a GUO WEN-GUI, a/k/a
6 WAN GUE HAOYUN, a/k/a MILES KWOK, a/k/a
HAOYUN GUO,

7 Defendant.
8 INDEX NO.: 652077/2017
9 -----X

10
11 1100 Superior Avenue East
Cleveland, Ohio
12 April 9, 2019
13 8:38 a.m.

14
15 Videotaped examination of MICHAEL HORVITZ,
16 taken before me, the undersigned, Sarah R. Drown,
17 a Registered Professional Reporter and Notary
18 Public within and for the State of Ohio.

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21
22
23 ELLEN GRAUER COURT REPORTING CO., LLC
126 East 56th Street, Fifth Floor
24 New York, New York 10022
25 212-750-6434
REF: 267201

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23 ALSO PRESENT:

24 Ivan Bercian, Videographer

25

1 MICHAEL HORVITZ

2 Wong that purported to say that Mr. Kwok
3 was the owner and controller of the
4 company.

5 Q. What is your view sitting here
6 today after reviewing his testimony as to
7 the veracity of Mr. Kwok's certification
8 that he owned and controlled Beijing
9 Zenith?

10 A. Well, I believe that this
11 testimony, the deposition testimony, and
12 the representations that we received in
13 2015 are completely inconsistent with
14 each other, but I can't tell which one is
15 true. So I don't know whether -- whether
16 he's lying in the deposition or he was
17 misrepresenting the situation in 2015,
18 but I don't see how both situations could
19 be true.

20 Q. Had you known that Mr. Kwok
21 didn't actually own Beijing Zenith even
22 though he certified he did, how, if at
23 all, would that have affected your
24 recommendation to the board?

25 MS. SEARLES: Object to

1 MICHAEL HORVITZ

2 form.

3 A. Well, I have a very low
4 tolerance for people who have an
5 inability to tell the truth, and if I had
6 known that the representations being made
7 were not true, my guess is that I would
8 have not recommended approval of the
9 purchase of the apartment.

10 Q. Do you recall your testimony
11 earlier today that based on Mr. Kwok's
12 certification and representations that
13 you believe Beijing Zenith was an
14 operational company?

15 A. Well, I didn't form a judgment
16 about what business it was in, whether it
17 had operations, whether it was a holding
18 company, what it was. It was my belief
19 that it was a company owned and
20 controlled by Mr. Kwok.

21 I found the financials
22 difficult to understand, so I couldn't
23 make a judgment about that. But I didn't
24 form an opinion of, you know, what
25 business it was in.

1 MICHAEL HORVITZ

2 Q. If I can direct your attention
3 to page 79 of the testimony. I'm going
4 to start reading from line 23. This
5 testimony goes on to the next page.

6 Question, "Mr. Kwok, did you
7 know at the time this Beijing Zenith
8 Holdings balance sheet was submitted to
9 The Sherry-Netherland that Beijing Zenith
10 Holdings' assets had been frozen by the
11 Chinese government?"

12 "Object to the form of the
13 question."

14 Mr. Kwok refuses to answer and
15 then he's instructed that he can answer
16 this question. He answers on line 9, "In
17 that case, I know. Yes."

18 Do you see that?

19 A. Yes.

20 Q. What, if any, reaction sitting
21 here today do you have to this testimony,
22 Mr. Horvitz?

23 A. Well, I -- I felt that the
24 Beijing Zenith financial statements
25 were -- there was something wrong with

1 MICHAEL HORVITZ

2 them when I first reviewed them. So I
3 had a skepticism about them, which is why
4 I didn't recommend approval based on the
5 Beijing Zenith Holdings' financial
6 statements.

7 So in this sense I guess I'm
8 not surprised that -- that those
9 statements were even more inaccurate than
10 I thought they were, but they certainly
11 confirm the idea that the statements were
12 not accurate.

13 Q. Do you recall your testimony,
14 based on Mr. Kwok and his lawyers'
15 representations, that you believed he
16 owned 50 percent of Bravo Luck?

17 A. Of Bravo Luck? Yes.

18 Q. If I can direct your attention
19 to page 82 of the testimony of Exhibit 8,
20 please.

21 I'm going to start at line 11.

22 "Thank you. I have handed
23 you -- the court reporter has handed you
24 Exhibit 5, which is a statement entitled
25 Debit Advice from UBS in Hong Kong for

1 MICHAEL HORVITZ
2 Bravo Luck Limited, and it's
3 Bates-stamped Kwok 510, and it was
4 produced by your counsel to us in this
5 case, Mr. Kwok."

6 Do you see that, Mr. Horvitz?

7 A. Yes.

8 Q. I'm going to read from line
9 17.

10 Question, "Bravo Luck Limited
11 is a company owned by Zhang Wei?"

12 Answer, "Yes."

13 Question, "You have no
14 ownership interest in Bravo Luck
15 Limited?"

16 Answer, "I do not remember
17 having any."

18 Do you see that testimony?

19 A. I do see it, yes.

20 Q. What is your reaction, if any,
21 sitting here today, Mr. Horvitz, to
22 Mr. Kwok's testimony regarding Bravo
23 Luck?

24 A. Well, my reaction is again
25 it's completely inconsistent with the

1 MICHAEL HORVITZ
2 representations that were made at the
3 time, in 2015, at the time of the
4 application. And either those
5 representations were inaccurate at the
6 time or this testimony is inaccurate when
7 it was given. I have no view as to which
8 it is, but they're completely
9 inconsistent.

10 Q. How does reading Mr. Kwok's
11 testimony from 2018 make you feel
12 regarding the representations he made in
13 2015?

14 A. It doesn't really -- because I
15 don't know whether the representations in
16 2015 were true or not, it doesn't -- it
17 really in a funny way doesn't cast doubt
18 on the original representations, but it
19 tells me that one of two things happened.

20 Either he was misrepresenting
21 at the time or he's lying in this
22 deposition. And it's theoretically
23 possible that the representation was true
24 and now he's lying and it's also possible
25 that the reverse is true. I don't have a

1 MICHAEL HORVITZ

2 view on that.

3 If I -- if I had known or if
4 I -- if this testimony indicated to me
5 that the representations in 2015 were
6 inaccurate, I would consider, too, that
7 we were defrauded.

8 Q. I don't have anything further
9 at this time. I reserve my right to ask
10 additional questions after Ms. Searles'
11 examination.

12 I don't know if you want to
13 take a break before Ms. Searles starts or
14 not.

15 MS. SEARLES: Yeah, it
16 might make more sense just to take
17 a quick break so I can --

18 MR. MOSS: Sure.

19 MS. SEARLES: -- just make
20 sure to do it as quickly as
21 possible for you.

22 THE WITNESS: No problem.

23 THE VIDEOGRAPHER: Off the
24 record. The time is 9:56.

25 - - - - -

1 MICHAEL HORVITZ

2 (Recess taken.)

3 - - - - -

4 THE VIDEOGRAPHER: We're back
5 on the record. The time is now
6 10:07.

7 EXAMINATION OF MICHAEL HORVITZ

8 BY MS. SEARLES:

9 Q. Good morning, Mr. Horvitz.

10 As I mentioned earlier, I'm
11 Jillian Searles, counsel for Mr. Kwok. I
12 just have a few questions for you.

13 What, if anything, did you do
14 today to prepare for your deposition?

15 A. Today?

16 Q. Or what did you do to prepare
17 for your deposition today, if anything,
18 at any point before this day?

19 A. Well, I reviewed the minutes
20 of the two meetings. I reviewed the
21 application package. I talked to my
22 counsel. That's pretty much it.

23 Q. Aside from your counsel, did
24 you speak to anyone at the board?

25 A. No.

1 MICHAEL HORVITZ

2 Q. Did you speak to Mr. Ullman?

3 A. No.

4 Q. You mentioned you reviewed a
5 couple of documents, the board minutes?

6 A. The board minutes, the
7 application package. I also reviewed the
8 correspondence from Ira Gilbert and Jerry
9 Shulman regarding the financial
10 information.

11 Q. Did you review any of the
12 legal pleadings in this particular
13 matter?

14 A. I received them, but I didn't
15 read them.

16 Q. From whom did you receive the
17 legal pleadings?

18 A. My counsel.

19 Q. I believe you mentioned
20 earlier you own an apartment at The
21 Sherry-Netherland?

22 A. Yes.

23 Q. You've owned that apartment
24 since 2004?

25 A. No. I went on the board in

1 MICHAEL HORVITZ
2 2004. I've owned -- I've owned the
3 apartment since 1988. And then I
4 acquired -- there were a hotel room next
5 to it and I acquired that some time
6 later, I can't remember the year, and
7 combined it with my apartment. But I've
8 been a shareholder since 1988.

9 Q. Okay. Do you own that
10 apartment in your own name?

11 A. I own it in the name of a
12 revocable trust that is my trust.

13 Q. Is it common for individuals
14 living at The Sherry-Netherland to own
15 their apartments through other entities?

16 A. I'd say it's --

17 MR. MOSS: Objection to
18 the form.

19 A. I don't know how prevalent it
20 is, but it's not -- it's not uncommon.

21 Q. Earlier today you testified
22 that you were given various financial
23 information with respect to your review
24 of Mr. Kwok's application.

25 Other than reviewing, reading

1 MICHAEL HORVITZ

2 the actual material that was provided to
3 you, what, if anything, did you do to
4 verify that information?

5 MR. MOSS: Object to
6 the form.

7 A. Well, I -- with respect to the
8 Beijing Zenith financial information, I
9 did nothing to verify it because I found
10 it incomprehensible. So I discounted it.

11 With respect to the Bravo Luck
12 financial statement, I looked at the
13 certification to confirm that Mr. Kwok
14 was the -- had access to the funds.

15 But I don't think I did
16 anything further. I don't remember doing
17 anything further, as far as verification
18 is concerned.

19 Q. You testified earlier that
20 during the application process you did
21 have additional questions, correct?

22 MR. MOSS: Object to
23 the form.

24 Q. Of the financial information
25 that you were given, correct?

1 C E R T I F I C A T E

2

3 I, Sarah R. Drown, a Registered Professional

4 Reporter and Notary Public within and for the State

5 of Ohio, duly commissioned and qualified, do hereby

6 certify that MICHAEL HORVITZ, was first duly sworn

7 to testify the truth, the whole truth and nothing

8 but the truth in the cause aforesaid; that the

9 testimony then given by him was by me reduced to

10 stenotypy in the presence of said witness,

11 afterwards transcribed on a computer/printer, and

12 that the foregoing is a true and correct transcript

13 of the testimony so given by him as aforesaid.

14 I do further certify that this deposition was

15 taken at the time and place in the foregoing caption

16 specified. I do further certify that I am not a

17 relative, counsel or attorney of either party, or

18 otherwise interested in the event of this action.

19 IN WITNESS WHEREOF, I have hereunto set my hand

20 and affixed my seal of office at Cleveland, Ohio, on

21 this 10th day of April, 2019.

22

23 

24

25 Sarah R. Drown, RPR, Notary Public